

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Wireless Emergency Alerts) PS Docket No. 15-91
)

ORDER

Adopted: September 1, 2017

Released: September 1, 2017

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this *Order*, the Public Safety and Homeland Security Bureau (Bureau) grants temporary and conditional relief in response to a petition filed yesterday by the Competitive Carriers Association (CCA) in this docket.¹ On behalf of its members, CCA seeks a partial waiver of Section 10.220 of the Commission’s rules, which requires Commercial Mobile Service providers participating in the Wireless Emergency Alerts (WEA) system (Participating CMS Providers) to provide the Federal Communications Commission (FCC or Commission) and affected subscribers 60-days’ notice of their intent to withdraw their election.² Because CCA argues that, absent a waiver, some of its members would be required to notify customers today of their intent to withdraw their election to participate in the WEA system, and we find that the agency needs additional time to consider the merits of this waiver request, which was just filed yesterday, we grant CCA interim relief. Specifically, we temporarily waive the 60-day notice requirement until the Commission or the Bureau acts on the merits of the *August 31 CCA Petition*.³ However, in order to ensure that this interim and temporary relief is not abused, we condition this waiver on the requirement that no Participating CMS Providers that are members of CCA and want to take advantage of the waiver stop participating in WEA while this temporary waiver remains in effect.

II. BACKGROUND

2. In September 2016, the Commission adopted the *WEA R&O* which, among other actions, required Commercial Mobile Service (CMS) Providers to support embedded references in Wireless Emergency Alerts (WEAs) within one year of the rules’ publication in the *Federal Register*.⁴ It also required Participating CMS Providers to geographically target (geo-target) Alert Messages to an area that best approximates the target area specified by the alert originator, while continuing to allow Participating

¹ See Petition of Competitive Carriers Association for Waiver, or in the Alternative, Extension of Time, PS Docket Nos. 15-91, 25-94 (filed Aug. 31, 2017) as amended by Letter from Rebecca Thompson to Marlene Dortch, Secretary, Federal Communications Commission, PS Docket No. 15-91 (filed Sept. 1, 2017) (*August 31 CCA Petition*).

² See 47 C.F.R. § 10.220.

³ See *August 31 CCA Petition* at 3 (requesting that the Commission waive the 60-days’ notification requirement by allowing CMS Providers to provide only 30-days’ notice to subscribers of their choice to withdraw from WEA participation).

⁴ *Wireless Emergency Alerts; Amendments to Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91, 15-94, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 11112, 11132, 11162 paras. 29, 80 (2016) (*WEA R&O*).

CMS Providers to transmit Alert Messages to an area not exceeding the propagation area of a single transmission site in the event they are unable to meet the “best approximates” standard.⁵ The *WEA R&O* required nationwide Participating CMS Providers to comply with this geo-targeting requirement within 60 days of the rules’ publication in the *Federal Register*,⁶ but allowed non-nationwide Participating CMS Providers additional time – a year after the rules’ publication – to comply with this geo-targeting requirement. The *WEA R&O* was published in the *Federal Register* on November 1, 2016; accordingly, the effective date for both the embedded references and the geo-targeting requirement (as the latter pertains to non-nationwide providers) is November 1, 2017.⁷

3. On August 16, 2017, CCA filed a *Petition for Waiver, or in the Alternative, Extension of Time* from CCA (*August 16 CCA Petition*).⁸ The *August 16 CCA Petition* requests a waiver or extension of the compliance timeline for support for embedded references until May 1, 2019, and further requests a waiver or extension of its members’ compliance timeframe for the “best approximates” geo-targeting standard until May 1, 2019.⁹ On August 31, 2017, CCA amplified its request for relief by filing another waiver request.¹⁰ CCA states that absent a waiver, any Participating CMS Providers among its membership who cannot meet the November 1, 2017 compliance deadline would be required to notify their consumers imminently of their intent to withdraw their election to provide WEA alerting given the requirement in Section 10.220 of the Commission’s rules to supply 60 days’ notice.¹¹ CCA calculates this deadline as September 1, 2017,¹² and highlights several “critical current events, such as the severe flooding in southeast Texas as a result of Hurricane Harvey” that are consuming its resources in the near term.¹³ CCA therefore requests an additional 30 days for its members to determine whether it is feasible to support enhanced WEA capabilities and avoid opting-out of the program.¹⁴

III. DISCUSSION

4. Section 1.3 authorizes the Commission to waive its rules for good cause.¹⁵ We find it would serve the public interest to temporarily waive the 60-day prior notice provision of Section 10.220,

⁵ *Id.* at 11146, 11149, paras. 52, 54.

⁶ *See id.* at 11164, para. 83.

⁷ *See Wireless Emergency Alerts; Amendments to the Rules Regarding the Emergency Alert System*, 81 FR 75710 (Nov. 1, 2016).

⁸ *Petition of Competitive Carriers Association (CCA) for Waiver, or in the Alternative, Extension of Time*, PS Docket No. 15-91 (filed Aug. 16, 2017) (*August 16 CCA Petition*) [https://ecfsapi.fcc.gov/file/10816865130307/CCA%20WEA%20Petition%20for%20Waiver%20\(081617\).pdf](https://ecfsapi.fcc.gov/file/10816865130307/CCA%20WEA%20Petition%20for%20Waiver%20(081617).pdf). CCA offered, in the alternative that the FCC could extend these deadlines by a 12-month period, or could extend the compliance timeframe to 12 months from the completion of all relevant standards.

⁹ *See August 16 CCA Petition* at 7.

¹⁰ *See August 31 CCA Petition*.

¹¹ *See* Letter from Rebecca Thompson to Marlene Dortch, Secretary, Federal Communications Commission, PS Docket No. 15-91 (filed Sept. 1, 2017) (reiterating its request that “the Bureau grant CCA’s August 31, 2017 *Petition for Waiver* to allow competitive carriers 30 days to provide consumers with notice of their election to withdraw from the voluntary Wireless Emergency Alerts program, if applicable, pursuant to Section 10.220 of the FCC’s rules”).

¹² *Id.* at 3.

¹³ *Id.* at 6.

¹⁴ *See August 31 CCA Petition* at 6.

¹⁵ *See* 47 CFR § 1.3 (“Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown.”); *see also* *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (waivers must show special (continued....)

on an interim basis in order to afford sufficient time for the agency to review and act on the merits of the *August 31 CCA Petition*. As described above, CCA states that absent relief, many of its member companies would be forced to notify their subscribers of their intent to withdraw from WEA imminently because they are unable to comply with the Commission's embedded reference and "best approximates" geo-targeting requirements that go into effect in 60 days.¹⁶ This interim and temporary waiver will provide the Commission with time to assess the merits of CCA's request before it is largely mooted. We find, however, that it would not serve the public interest if Participating CMS Providers that wish to take advantage of this waiver withdraw from supplying WEA messaging during the pendency of this temporary waiver. Absent this condition, Participating CMS Providers could withdraw tomorrow from supplying WEA messaging with no customer notice. Thus, no CMS Provider that wishes to take advantage of this waiver may withdraw from WEA during the short period of time while this temporary waiver is in place. We anticipate that a ruling on the merits of the *August 31 CCA Petition* will be made expeditiously.

IV. ORDERING CLAUSES

5. Accordingly, IT IS ORDERED that, pursuant to the authority granted by Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i) and Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the notification requirement of Section 10.220 of the Commission's rules, 47 C.F.R. § 10.220, IS WAIVED to the extent described herein and subject to the condition described herein.

6. This Order is issued pursuant to authority delegated by sections 0.191(e), 0.191(f), and 0.392 of the Commission's rules, 47 CFR § 0.191(e), 0.191(f), and 0.392.

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circumstances warranting a deviation from the general rule, and show such a deviation will serve the public interest)).

¹⁶ See 47 CFR § 10.220 (requiring that CMS Providers provide 60-days' notice to the Commission and subscribers of their intention to withdraw from WEA participation). Accordingly, these CCA members would be forced to render that decision before the Commission acted on their requests for an extension of those compliance deadlines or on its request for waiver of the 60-day notification requirement.